# House of Representatives

General Assembly

**File No. 452**

*January Session, 2007*

Substitute House Bill No. 5298

*House of Representatives, April 11, 2007*

The Committee on Government Administration and Elections reported through REP. CARUSO of the 126th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE IDENTITY OF WHISTLEBLOWERS, EXTENDING WHISTLEBLOWER PROTECTIONS TO MUNICIPAL WHISTLEBLOWERS AND ESTABLISHING AN OFFICE OF ADMINISTRATIVE HEARINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 4-61dd of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Any person having knowledge of any matter involving corruption, unethical practices, violation of state laws or regulations, mismanagement, gross waste of funds, abuse of authority or danger to the public safety occurring in any state or municipal department or agency or any quasi-public agency, as defined in section 1-120, or any person having knowledge of any matter involving corruption, violation of state or federal laws or regulations, gross waste of funds, abuse of authority or danger to the public safety occurring in any large state contract, may transmit all facts and information in such person's

possession concerning such matter to the Auditors of Public Accounts. The Auditors of Public Accounts shall review such matter and report their findings and any recommendations to the Attorney General. Upon receiving such a report, the Attorney General shall make such investigation as the Attorney General deems proper regarding such report and any other information that may be reasonably derived from such report. Prior to conducting an investigation of any information that may be reasonably derived from such report, the Attorney General shall consult with the Auditors of Public Accounts concerning the relationship of such additional information to the report that has been issued pursuant to this subsection. Any such subsequent investigation deemed appropriate by the Attorney General shall only be conducted with the concurrence and assistance of the Auditors of Public Accounts. At the request of the Attorney General or on their own initiative, the auditors shall assist in the investigation. The Attorney General shall have power to summon witnesses, require the production of any necessary books, papers or other documents and administer oaths to witnesses, where necessary, for the purpose of an investigation pursuant to this section. Upon the conclusion of the investigation, the Attorney General shall where necessary, report any findings to the Governor, or in matters involving criminal activity, to the Chief State's Attorney. In addition to the exempt records provision of section 1-210, the Auditors of Public Accounts and the Attorney General shall not, after receipt of any information from a person under the provisions of this section, disclose the identity of such person. **[**without such person's consent unless the Auditors of Public Accounts or the Attorney General determines that such disclosure is unavoidable, and may withhold records of such investigation, during the pendency of the investigation.**]**

(b) (1) No state or municipal officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state, municipal or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's

disclosure of information to (A) an employee of the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section; (B) an employee of the state or municipal agency or quasi-public agency where such state or municipal officer or employee is employed; (C) an employee of a state agency pursuant to a mandated reporter statute; or (D) in the case of a large state contractor, an employee of the contracting state agency concerning information involving the large state contract.

(2) If a state, municipal or quasi-public agency employee or an employee of a large state contractor alleges that a personnel action has been threatened or taken in violation of subdivision (1) of this subsection, the employee may notify the Attorney General, who shall investigate pursuant to subsection (a) of this section.

(3) (A) Not later than thirty days after learning of the specific incident giving rise to a claim that a personnel action has been threatened or has occurred in violation of subdivision (1) of this subsection, a state, municipal or quasi-public agency employee, an employee of a large state contractor or the employee's attorney may file a complaint concerning such personnel action with the Chief Human Rights Referee designated under section 46a-57. The Chief Human Rights Referee shall assign the complaint to a human rights referee appointed under section 46a-57, who shall conduct a hearing and issue a decision concerning whether the officer or employee taking or threatening to take the personnel action violated any provision of this section. If the human rights referee finds such a violation, the referee may award the aggrieved employee reinstatement to the employee's former position, back pay and reestablishment of any employee benefits for which the employee would otherwise have been eligible if such violation had not occurred, reasonable attorneys' fees, and any other damages. For the purposes of this subsection, such human rights referee shall act as an independent hearing officer. The decision of a human rights referee under this subsection may be appealed by any person who was a party at such hearing, in accordance with the provisions of section 4-183.

(B) The Chief Human Rights Referee shall adopt regulations, in accordance with the provisions of chapter 54, establishing the procedure for filing complaints and noticing and conducting hearings under subparagraph (A) of this subdivision.

(4) As an alternative to the provisions of subdivisions (2) and (3) of this subsection: (A) A state or quasi-public agency employee who alleges that a personnel action has been threatened or taken may file an appeal not later than thirty days after learning of the specific incident giving rise to such claim with the Employees' Review Board under section 5-202, or, in the case of a state, municipal or quasi-public agency employee covered by a collective bargaining contract, in accordance with the procedure provided by such contract; or (B) an employee of a large state contractor alleging that such action has been threatened or taken may, after exhausting all available administrative remedies, bring a civil action in accordance with the provisions of subsection (c) of section 31-51m.

(5) In any proceeding under subdivision (2), (3) or (4) of this subsection concerning a personnel action taken or threatened against any state, municipal or quasi-public agency employee or any employee of a large state contractor, which personnel action occurs not later than one year after the employee first transmits facts and information concerning a matter under subsection (a) of this section to the Auditors of Public Accounts or the Attorney General, there shall be a rebuttable presumption that the personnel action is in retaliation for the action taken by the employee under subsection (a) of this section.

(6) If a state officer or employee, as defined in section 4-141, a quasi-public agency officer or employee, an officer or employee of a large state contractor or an appointing authority takes or threatens to take any action to impede, fail to renew or cancel a contract between a state agency and a large state contractor, or between a large state contractor and its subcontractor, in retaliation for the disclosure of information pursuant to subsection (a) of this section to any agency listed in subdivision (1) of this subsection, such affected agency, contractor or

subcontractor may, not later than ninety days after learning of such action, threat or failure to renew, bring a civil action in the superior court for the judicial district of Hartford to recover damages, attorney's fees and costs.

(c) Any employee of a state, municipal or quasi-public agency or large state contractor, who is found to have knowingly and maliciously made false charges under subsection (a) of this section, shall be subject to disciplinary action by such employee's appointing authority up to and including dismissal. In the case of a state or quasi-public agency employee, such action shall be subject to appeal to the Employees' Review Board in accordance with section 5-202, or in the case of state, municipal or quasi-public agency employees included in collective bargaining contracts, the procedure provided by such contracts.

(d) On or before September first, annually, the Auditors of Public Accounts shall submit to the clerk of each house of the General Assembly a report indicating the number of matters for which facts and information were transmitted to the auditors pursuant to this section during the preceding state fiscal year and the disposition of each such matter.

(e) Each contract between a state or quasi-public agency and a large state contractor shall provide that, if an officer, employee or appointing authority of a large state contractor takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of this section, the contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the state or quasi-public agency may request the

Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.

(f) Each large state contractor shall post a notice of the provisions of this section relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the contractor.

(g) No person who, in good faith, discloses information to the Auditors of Public Accounts or the Attorney General in accordance with this section shall be liable for any civil damages resulting from such good faith disclosure.

(h) As used in this section:

(1) "Large state contract" means a contract between an entity and a state or quasi-public agency, having a value of five million dollars or more; and

(2) "Large state contractor" means an entity that has entered into a large state contract with a state or quasi-public agency.

Sec. 2. (NEW) (*Effective July 1, 2007*) There shall be within the Executive Department an Office of Administrative Hearings for the purpose of separating the adjudicatory function from the investigatory and prosecutorial functions of agencies in the Executive Department and to perform the impartial administration and conduct of hearings of contested cases in accordance with the provisions of sections 2 to 12, inclusive, and 24 of this act and chapter 54 of the general statutes. The central office of the Office of Administrative Hearings shall be established within Hartford County.

Sec. 3. (NEW) (*Effective July 1, 2007*) (a) A Chief Administrative Law Judge shall be appointed by the Governor, to serve a term expiring on March 1, 2008. Thereafter, the Governor shall, with the advice and consent of the General Assembly, appoint the Chief Administrative Law Judge to serve for a four-year term or until a successor has been

appointed and qualified. To be eligible for appointment, the Chief Administrative Law Judge shall have been admitted to the practice of law in this state for at least ten years and shall be knowledgeable on the subject of administrative law. The Chief Administrative Law Judge shall take the oath of office provided in section 1-25 of the general statutes prior to commencing his or her duties, shall devote full time to the duties of the office of Chief Administrative Law Judge and shall not engage in the private practice of law. The Chief Administrative Law Judge shall be eligible for reappointment.

(b) The Chief Administrative Law Judge may be removed during his or her term by the Governor for good cause shown.

(c) The Chief Administrative Law Judge shall be exempt from the classified service.

(d) The Chief Administrative Law Judge, administrative law judges, assistants and other employees of the Office of Administrative Hearings shall be entitled to the fringe benefits applicable to other state employees, shall be included under the provisions of chapters 65 and 66 of the general statutes regarding disability and retirement of state employees and shall receive full retirement credit for each year or portion thereof for which retirement benefits are paid for service as such Chief Administrative Law Judge, administrative law judge, assistant or other employee.

Sec. 4. (NEW) (*Effective July 1, 2007*) (a) The Chief Administrative Law Judge shall be the chief executive officer of the Office of Administrative Hearings and shall:

(1) Have all of the powers specifically granted in the general statutes and any additional powers that are reasonable and necessary to enable the Chief Administrative Law Judge to carry out the duties of his or her office, including, but not limited to, the powers and duties specified in section 4-8 of the general statutes;

(2) Assign administrative law judges in all cases referred to the

Office of Administrative Hearings, provided, in assigning an administrative law judge to a case, the Chief Administrative Law Judge shall, whenever practicable, assign an administrative law judge who has expertise in the legal issues or general subject matter of the proceeding;

(3) Have all the powers and duties of an administrative law judge;

(4) Prepare an edited version of a proposed final decision and final decision that shall not disclose protected information in any case where any provision of the general statutes, federal law, state or federal regulations or an order of a court of competent jurisdiction bars the disclosure of the identity of any person or party or bars the disclosure of any other information;

(5) Collect, compile and prepare statistics and other data with respect to the operations of the Office of Administrative Hearings and submit annually to the Governor and the General Assembly a report on such operations, including, but not limited to, the number of hearings initiated, the number of proposed final decisions rendered, the number of partial or total reversals of such decisions by the agencies, the number of final decisions rendered and the number of proceedings pending;

(6) Study the subject of administrative adjudication in all its aspects and develop recommendations to promote the goals of impartiality, fairness, uniformity and cost-effectiveness in the administration and conduct of hearings of contested cases;

(7) Adopt regulations, in accordance with chapter 54 of the general statutes, to carry out the provisions of sections 2 to 12, inclusive, and 24 of this act and sections 4-176e to 4-181a, inclusive, of the general statutes, as amended by this act, and the policies of the Office of Administrative Hearings in connection therewith. Such regulations, with respect to contested cases heard by said office, shall supersede any inconsistent agency regulations, policies or procedures, except those mandated by the general statutes or federal law, and shall

include, but not be limited to, standards related to time limits for agency action in contested cases pursuant to applicable provisions of the general statutes, and standards for the giving of notices of hearings, for the scheduling of hearings and for the assignment of administrative law judges;

(8) Develop, in consultation with each agency subject to the provisions of section 9 of this act and with the appropriate committee or section of the Connecticut Bar Association, a program for the continuing training and education of administrative law judges and ancillary personnel, and implement such program; and

(9) Index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions and final decisions available for public inspection and copying electronically and to the extent required by the Freedom of Information Act, as defined in section 1-200 of the general statutes.

(b) Any Deputy Chief Administrative Law Judge of the Office of Administrative Hearings shall be appointed by the Chief Administrative Law Judge from among the administrative law judges.

Sec. 5. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding any provision of the general statutes, each full-time employee or permanent part-time employee of an agency subject to the provisions of section 9 of this act whose primary duties (1) are to conduct hearings in contested cases and issue final decisions or proposed final decisions, including, but not limited to, human rights referees, hearing adjudicators and hearing officers, or (2) relate to providing administrative services required for conducting such hearings and issuing such decisions, shall be transferred to the Office of Administrative Hearings, in accordance with the provisions of this section and sections 4-38d, 4-38e and 4-39 of the general statutes.

(b) Persons transferred to the Office of Administrative Hearings pursuant to this section and persons appointed by the Chief Administrative Law Judge pursuant to chapter 67 of the general

statutes shall be in the classified service and subject to the provisions of chapter 68 of the general statutes. Persons transferred to the Office of Administrative Hearings pursuant to this section who are members of an employee organization, as defined in section 5-270 of the general statutes, at the time of their transfer shall continue to be represented by such employee organization. Administrative law judges appointed by the Chief Administrative Law Judge shall be represented by the collective bargaining representative for administrative and residual state employees.

(c) The salaries, seniority and benefits of persons transferred to the Office of Administrative Hearings pursuant to this section shall not be reduced as a result of the transfer.

(d) No promotions governed by any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees shall be denied, delayed, impaired or eliminated by the implementation of sections 2 to 12, inclusive, of this act.

(e) (1) Persons transferred to the Office of Administrative Hearings pursuant to this section who are members of a collective bargaining unit at the time of their transfer shall (A) not lose the job classification in which they are placed at the time of their transfer as a result of the transfer, and (B) remain the beneficiaries of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

(2) Persons transferred to the Office of Administrative Hearings pursuant to this section who are not members of a collective bargaining unit at the time of their transfer, and persons appointed by the Chief Administrative Law Judge, shall (A) have a job classification commensurate with persons who are members of a collective bargaining unit at the time of their transfer, and (B) be subject to and become the beneficiaries of the terms of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

(f) Time served in other agencies by persons transferred to the Office of Administrative Hearings pursuant to this section shall be recognized as qualifying experience and time in the Office of Administrative Hearings and shall count as successful and satisfactory performance for career progression under any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

(g) An administrative law judge, assistant or other employee of the Office of Administrative Hearings who is removed, suspended, demoted or subjected to disciplinary action or other adverse employment action may appeal such action in accordance with the applicable collective bargaining agreement.

Sec. 6. (NEW) (*Effective October 1, 2007*) (a) Each administrative law judge shall have been admitted to the practice of law in this state for at least two years, except that such requirement shall not apply to any administrative law judge transferred pursuant to section 5 of this act. Each administrative law judge shall be knowledgeable on the subject of administrative law.

(b) An administrative law judge assigned to hear matters pursuant to section 10-76h of the general statutes shall receive training in administrative hearing procedures, including due process, applicable to the special education needs of children.

(c) An administrative law judge shall have the powers granted to hearing officers and presiding officers pursuant to sections 2 to 12, inclusive, and 24 of this act and chapter 54 of the general statutes.

Sec. 7. (NEW) (*Effective October 1, 2007*) (a) All hearings in contested cases conducted by the Office of Administrative Hearings shall be conducted by an administrative law judge assigned by the Chief Administrative Law Judge and shall be conducted in accordance with sections 2 to 12, inclusive, and 24 of this act and sections 4-176e to 4-181a, inclusive, of the general statutes, as amended by this act.

(b) Unless different time limits are provided by any provision of the general statutes for contested cases before an agency, the time limits provided in sections 4-176e to 4-181a, inclusive, of the general statutes, as amended by this act, apply to all contested cases conducted by the Office of Administrative Hearings.

Sec. 8. (NEW) (*Effective October 1, 2007*) An administrative law judge may conduct hearings, mediations and settlement negotiations held by the Office of Administrative Hearings. If a contested case is not resolved through mediation or settlement, either party may proceed to a hearing. An administrative law judge who attempted to settle or mediate a matter may not thereafter be assigned to hear the matter. If a contested case is resolved by stipulation, agreed settlement or consent order to the administrative law judge, the administrative law judge shall issue an order dismissing the contested case. The order shall incorporate by reference such stipulation, agreed settlement or consent order which shall be attached thereto. The order shall further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. The order and stipulation, agreed settlement or consent order may be enforceable by any party in Superior Court. A party may petition the superior court for the judicial district of New Britain for enforcement of the order and stipulation, agreed settlement or consent order and for appropriate temporary relief or a restraining order.

Sec. 9. (NEW) (*Effective October 1, 2007*) (a) Notwithstanding any provision of the general statutes, and except as otherwise provided in sections 10 and 11 of this act, on and after the effective date of this section, the Office of Administrative Hearings shall conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases:

(1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of the general statutes, as amended by this act;

(2) Brought by or before the Department of Children and Families;

(3) Brought by or before the Department of Transportation; and

(4) Brought by or before the Commission on Human Rights and Opportunities.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in sections 10 and 11 of this act, on and after February 1, 2008, the Office of Administrative Hearings shall conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases:

(1) Pursuant to section 10-76h of the general statutes;

(2) Pursuant to subdivision (2) of subsection (b) of section 10-186 and section 10-187 of the general statutes; and

(3) Brought by or before the Department of Motor Vehicles pursuant to section 14-36g, 14-40c, 14-44, 14-46g, 14-52, 14-52a, 14-64, 14-67c, 14-67p, 14-72, 14-74, 14-79, 14-111, 14-111f, 14-111g, 14-111q, 14-134, 14-163c, 14-163d, 14-191 or 14-253a of the general statutes.

(c) The powers, functions and duties of conducting hearings and issuing decisions in contested cases enumerated in subsections (a) and (b) of this section shall, on the applicable dates specified in said subsections, be transferred to the Office of Administrative Hearings in accordance with the provisions of sections 4-38d, 4-38e and 4-39 of the general statutes.

(d) Any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases enumerated in subsections (a) and (b) of this section shall, on and after the applicable dates specified in said subsections, continue to serve until all such cases assigned to such hearing officer are completed, unless the Chief Administrative Law Judge determines that the case shall be reassigned to an administrative law judge.

Sec. 10. (NEW) (*Effective July 1, 2007*) No administrative law judge may be assigned by the Chief Administrative Law Judge to hear a

contested case with respect to:

(1) Any hearing that is required by federal law to be conducted by a specific agency or other hearing authority; or

(2) Any matter where the head of the agency, or one or more of the members of a multimember agency, presides at the hearing in a contested case.

Sec. 11. (NEW) (*Effective July 1, 2007*) On and after October 1, 2010, the Governor, at the request of the head of any agency subject to the provisions of section 9 of this act and for good cause shown, may exempt such agency from the requirements of said section.

Sec. 12. (NEW) (*Effective July 1, 2007*) The Chief Administrative Law Judge may contract with any political subdivision of this state to provide an administrative law judge to the political subdivision for the purpose of conducting hearings, mediations and settlements.

Sec. 13. Subsection (e) of section 2c-2b of the general statutes is amended by adding subdivision (21) as follows (*Effective July 1, 2007*):

(NEW) (21) The Office of Administrative Hearings established under section 2 of this act.

Sec. 14. Section 4-166 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

As used in this chapter and sections 2 to 12, inclusive, and 24 of this act, unless the context otherwise requires:

(1) "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Governor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181;

(2) "Contested case" means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency or by the Office of Administrative Hearings after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176, as amended by this act, hearings referred to in section 4-168 or hearings conducted by the Department of Correction or the Board of Pardons and Paroles;

(3) "Final decision" means (A) the **[**agency**]** determination in a contested case made pursuant to section 4-179, as amended by this act, section 24 of this act and section 4-180, as amended by this act, (B) a declaratory ruling issued by an agency pursuant to section 4-176, as amended by this act, or (C) **[**an agency**]** a decision made after reconsideration of a final decision. The term does not include a preliminary or intermediate ruling or order, **[**of an agency,**]** or a ruling **[**of an agency**]** granting or denying a petition for reconsideration;

(4) "Hearing officer" means an individual appointed by an agency to conduct a hearing in an agency proceeding that is not conducted by an administrative law judge pursuant to section 9 of this act. Such individual may be a staff employee of the agency;

(5) "Intervenor" means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of section 4-176 or subsection (b) of section 4-177a, as amended by this act;

(6) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes;

(7) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(8) "Party" means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding, or (C) who is granted status as a party under subsection (a) of section 4-177a, as amended by this act;

(9) "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding;

(10) "Presiding officer" means the head of the agency presiding at a hearing, the member of **[**an**]** a multimember agency or the hearing officer designated by the head of the agency to preside at **[**the**]** a hearing, or an administrative law judge presiding at a hearing;

(11) "Proposed final decision" means a final decision proposed by an agency or a presiding officer under section 4-179, as amended by this act, or section 24 of this act;

(12) "Proposed regulation" means a proposal by an agency under the provisions of section 4-168 for a new regulation or for a change in, addition to or repeal of an existing regulation;

(13) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings issued pursuant to section 4-176, as amended by this act, or (C) intra-agency or interagency memoranda;

(14) "Regulation-making" means the process for formulation and adoption of a regulation;

(15) "Administrative law judge" means an administrative law judge transferred or appointed in accordance with sections 3 to 6, inclusive, of this act;

(16) "Head of the agency" means the individual or group of individuals constituting the highest authority within an agency.

Sec. 15. Subsection (g) of section 4-176 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(g) If the agency conducts a hearing in a proceeding for a declaratory ruling, the provisions of **[**subsection (b) of section 4-177c,**]** section 4-178, as amended by this act, and section 4-179, as amended by this act, shall apply to the hearing.

Sec. 16. Section 4-176e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

Except as otherwise required by the general statutes, a **[**hearing in an agency proceeding may be held before (1)**]** contested case shall be heard by (1) an administrative law judge, (2) the head of the agency, (3) one or more of the members of a multimember agency, or (4) one or more hearing officers, provided no individual who has personally carried out the function of an investigator in a contested case may serve as a hearing officer in that case. **[**, or (2) one or more of the members of the agency.**]**

Sec. 17. Section 4-177 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice from the agency.

(b) The notice shall be in writing and shall include: (1) A statement of the time, place **[**,**]** and nature of the hearing or, if the contested case has been referred to the Office of Administrative Hearings, a statement that the matter has been referred to the Office of Administrative

Hearings and that the time and place of the hearing will be set by an administrative law judge; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(c) After an agency refers a contested case to the Office of Administrative Hearings, the agency shall certify the official record in such contested case to the Office of Administrative Hearings. The Office of Administrative Hearings shall issue a notice in writing to all parties that shall include a statement of the time, place and nature of the hearing. Thereafter, a party shall file all documents that are to become part of such record with the Office of Administrative Hearings. The filing of such documents with the agency rather than with the Office of Administrative Hearings shall not be a jurisdictional defect and shall not be grounds for termination of the proceeding, provided the administrative law judge may assess appropriate costs and sanctions against a party who misfiles such documents on a showing of prejudice resulting from a wilful misfiling. The Office of Administrative Hearings shall maintain the official record of a contested case referred to said office.

**[**(c)**]** (d) Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement **[**,**]** or consent order or by the default of a party.

**[**(d)**]** (e) The record in a contested case shall include: (1) Written notices related to the case; (2) all petitions, pleadings, motions and intermediate rulings; (3) evidence received or considered; (4) questions and offers of proof, objections and rulings thereon; (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings;

(6) proposed final decisions and exceptions thereto; and (7) the final decision.

**[**(e)**]** (f) Any recording or stenographic record of the proceedings shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript, unless otherwise provided by law. Nothing in this section shall relieve an agency of its responsibility under section 4-183, as amended by this act, to transcribe the record for an appeal.

Sec. 18. Section 4-177a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) The presiding officer shall grant a person status as a party in a contested case if **[**that**]** such officer finds that: (1) Such person has submitted a written petition to the agency or presiding officer, and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by **[**the agency's**]** a decision in the contested case.

(b) The presiding officer may grant any person status as an intervenor in a contested case if **[**that**]** such officer finds that: (1) Such person has submitted a written petition to the agency or presiding officer, and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.

(d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to

inspect and copy records, physical evidence, papers and documents, to introduce evidence **[**,**]** and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

Sec. 19. Section 4-177b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

In a contested case, the presiding officer may administer oaths, take testimony under oath relative to the case, subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in the case. If any person disobeys the subpoena or, having appeared, refuses to answer any question put to **[**him**]** such person or to produce any records, physical evidence, papers and documents requested by the presiding officer, the administrative law judge or, if the hearing is conducted by the agency, the agency may apply to the superior court for the judicial district of **[**Hartford**]** New Britain or for the judicial district in which the person resides, or to any judge of that court if it is not in session, setting forth the disobedience to the subpoena or refusal to answer or produce, and the court or judge shall cite the person to appear before the court or judge to show cause why the records, physical evidence, papers and documents should not be produced or why a question put to **[**him**]** such person should not be answered. Nothing in this section shall be construed to limit the authority of the agency, the administrative law judge or any party as otherwise allowed by law.

Sec. 20. Section 4-177c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

**[**(a)**]** In a contested case, each party and the agency, including an agency conducting the proceeding, shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the

general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors **[**,**]** and witnesses, and to present evidence and argument on all issues involved.

**[**(b) Persons not named as parties or intervenors may, in the discretion of the presiding officer, be given an opportunity to present oral or written statements. The presiding officer may require any such statement to be given under oath or affirmation.**]**

Sec. 21. Section 4-178 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

In contested cases: (1) Any oral or documentary evidence may be received, but the **[**agency**]** presiding officer shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) **[**agencies shall give effect to**]** the rules of privilege recognized by law shall be given effect; (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency, including an agency conducting the proceeding, shall be given an opportunity to compare the copy with the original; (5) a party and **[**such**]** the agency, including an agency conducting the proceeding, may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of judicially cognizable facts; **[**and of**]** (7) in a proceeding conducted by the agency or in an agency review of a proposed final decision, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge; **[**(7)**]** (8) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and **[**(8) the agency's**]** (9) in a proceeding conducted by the agency or in an agency review of a proposed final decision, the agency may use its experience, technical competence **[**,**]** and specialized knowledge **[**may be used**]** in the

evaluation of the evidence.

Sec. 22. Section 4-178a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

If a hearing in a contested case or in a declaratory ruling proceeding is held before a hearing officer or before less than a majority of the members of the agency who are authorized by law to render a final decision, a party, if permitted by regulation and before rendition of the final decision, may request a review by a majority of the members of the agency, of any preliminary, procedural or evidentiary ruling made at the hearing. The majority of the members may make an appropriate order, including the reconvening of the hearing. The provisions of this section do not apply to a hearing conducted by an administrative law judge.

Sec. 23. Section 4-179 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) When, in an agency proceeding that is not conducted by an administrative law judge, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

(b) A proposed final decision made under this section shall be in writing and **[**contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision**]** shall comply with the requirements of subsection (c) of section 4-180, as amended by this act.

(c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

(d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section.

Sec. 24. (NEW) (*Effective October 1, 2007*) (a) A proposed final decision rendered by an administrative law judge shall be delivered promptly to each party or the party's authorized representative, and to the agency, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. After such proposed final decision is rendered, the record in the contested case shall be delivered promptly to the agency.

(b) A proposed final decision rendered by an administrative law judge shall become a final decision of the agency unless the head of the agency, not later than twenty-one days following the date the proposed final decision is delivered or mailed to the agency, modifies or rejects the proposed final decision, provided the head of the agency may, before expiration of such time period and for good cause, certify the extension of such time period for not more than an additional twenty-one days. If the head of the agency modifies or rejects the proposed final decision, the head of the agency shall state the reason for the modification or rejection on the record. In reviewing a proposed final decision rendered by an administrative law judge, the head of the agency may afford each party, including the agency, an opportunity to present briefs and may afford each party, including the agency, an opportunity to present oral argument.

(c) If, within the time period provided in subsection (b) of this section, the head of the agency, in reviewing a proposed final decision rendered by an administrative law judge, determines that additional evidence is necessary, the head of the agency shall refer the matter to the Office of Administrative Hearings. The Chief Administrative Law Judge shall assign the administrative law judge who rendered such proposed final decision to take the additional evidence unless such administrative law judge is unavailable. After taking the additional evidence, the administrative law judge shall, not later than thirty days following such referral, prepare a proposed final decision as provided

in this section based on such additional evidence and the record of the prior hearing.

(d) A proposed final decision made under this section shall be in writing and shall comply with the requirements of subsection (c) of section 4-180 of the general statutes, as amended by this act.

Sec. 25. Section 4-180 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Each agency and administrative law judge shall proceed with reasonable dispatch to conclude any matter pending before **[**it**]** such agency or administrative law judge and, in all hearings of contested cases conducted by the agency or the administrative law judge, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later. **[**, in such proceedings.**]**

(b) If, in any contested case, any agency or administrative law judge fails to comply with the provisions of subsection (a) of this section, **[**in any contested case, any party thereto**]** any party to such contested case may apply to the superior court for the judicial district of **[**Hartford**]** New Britain for an order requiring the agency or administrative law judge to render a proposed final decision or a final decision forthwith. The court, after hearing, shall issue an appropriate order.

(c) A final decision in a contested case shall be in writing or, if there is no proposed final decision, orally stated on the record. **[**and, if adverse to a party,**]** A proposed final decision and a final decision in a contested case shall include **[**the agency's**]** findings of fact and conclusions of law necessary to **[**its**]** the decision and shall be made by applying all pertinent provisions of law. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The **[**agency shall state in**]** proposed final decision and the final decision shall contain the name of each party and the most recent mailing address, provided to the agency, of the party or **[**his**]** the party's authorized representative. If the final decision is orally stated on the

record, each such name and mailing address shall be included in the record.

(d) The final decision shall be delivered promptly to each party or **[**his**]** the party's authorized representative and, in the case of a final decision by an administrative law judge authorized by law to render such decision, to the agency, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. **[**The**]** An agency rendering a final decision shall immediately transmit a copy of such decision to the Office of Administrative Hearings. A proposed final decision that becomes a final decision because of agency inaction, as provided in subsection (b) of section 24 of this act, shall become effective at the expiration of the time period specified in said subsection or on a later date specified in such proposed final decision. Any other final decision shall be effective when personally delivered or mailed or on a later date specified **[**by the agency**]** in such final decision. The date of delivery or mailing of a proposed final decision and a final decision shall be endorsed on the front of the decision or on a transmittal sheet included with the decision.

Sec. 26. Subsection (a) of section 4-181 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) Unless required for the disposition of ex parte matters authorized by law, no hearing officer, administrative law judge or member of an agency who, in a contested case, is to render a final decision or to make a proposed final decision shall communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or, in connection with any issue of law, with any party or the party's representative, without notice and opportunity for all parties to participate.

Sec. 27. Section 4-181a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) (1) Unless otherwise provided by law, a party or the agency in a

contested case may, within fifteen days after the personal delivery or mailing of the final decision or within fifteen days after the date that a proposed final decision becomes a final decision because of agency inaction, as provided in subsection (b) of section 24 of this act, file with the [agency] authority that rendered the final decision a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, [the agency] such authority shall decide whether to reconsider the final decision. The failure of [the agency] such authority to make [that] such determination within twenty-five days of such filing shall constitute a denial of the petition.

(2) Within forty days of the personal delivery or mailing of the final decision, the [agency] authority that rendered the final decision, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(3) If the [agency] authority that rendered the final decision decides to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of this subsection, [the agency] such authority shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which [the agency] such authority decides to reconsider the final decision. If [the agency] such authority fails to render such decision made after reconsideration within such ninety-day period, the original final decision shall remain the final decision in the contested case for purposes of any appeal under the provisions of section 4-183, as amended by this act.

(4) Except as otherwise provided in subdivision (3) of this subsection, [an agency] a decision made after reconsideration pursuant

to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, as amended by this act, including, but not limited to, an appeal of (A) any issue decided by the [agency] authority that rendered the final decision in its original final decision that was not the subject of any petition for reconsideration or [the agency's] such authority's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by [the agency] such authority from the determination of such issue in the original final decision.

(b) On a showing of changed conditions, the [agency] authority that rendered the final decision may reverse or modify the final decision, at any time, at the request of any person or on [the agency's] such authority's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

(c) The [agency] authority that rendered the final decision may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal [that] such modification under the provisions of section 4-183, as amended by this act, or, if an appeal is pending when the modification is made, may amend the appeal.

(d) For the purposes of this section and section 4-183, as amended by this act, in the case of a proposed final decision that becomes a final decision because of agency inaction, as provided in subsection (b) of section 24 of this act, the authority that rendered the final decision

shall be deemed to be the agency.

Sec. 28. Section 4-183 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling, and (2) postponement of the appeal would result in an inadequate remedy.

(c) (1) Within forty-five days after mailing of the final decision under section 4-180, as amended by this act, or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the **[**agency**]** authority that rendered the final decision denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, as amended by this act, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a, as amended by this act, or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3) of subsection (a) of section 4-181a, as amended by this act, if **[**the agency**]** such authority decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, or (5) if a proposed final decision becomes a final decision because of agency inaction, as provided in subsection (b) of section 24 of this act, within forty-five days after the decision becomes final, whichever is applicable and is later, a person appealing as

provided in this section shall serve a copy of the appeal on the agency [that rendered the final decision] at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if [that] such person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. An appeal of a final decision under this section shall be taken within such applicable forty-five-day period regardless of the effective date of the final decision. Within [that] such time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency [that rendered the final decision] shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

(d) The person appealing, not later than fifteen days after filing the appeal, shall file or cause to be filed with the clerk of the court an affidavit, or the state marshal's return, stating the date and manner in which a copy of the appeal was served on each party and on the agency [that rendered the final decision,] and, if service was not made on a party, the reason for failure to make service. If the failure to make service causes prejudice to any party to the appeal or to the agency, the court, after hearing, may dismiss the appeal.

(e) If service has not been made on a party, the court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify each party not yet served.

(f) The filing of an appeal shall not, of itself, stay enforcement of [an agency] a final decision. An application for a stay may be made to the

agency, to the court or to both. Filing of an application with the agency shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from, which shall include the **[**agency's**]** findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the **[**agency**]** authority that rendered the final decision, the court may order that the additional evidence be taken before **[**the agency**]** such authority upon conditions determined by the court. **[**The agency**]** Such authority may modify its findings and decision by reason of the additional evidence and shall file **[**that**]** such evidence and any modifications, new findings **[**,**]** or decisions with the reviewing court.

(i) **[**The**]** Except as otherwise provided by law, the appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the **[**agency**]** presiding officer are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) **[**The**]** Unless a different standard of review is provided by law,

the court shall not substitute its judgment for that of the [agency] authority that rendered the final decision as to the weight of the evidence on questions of fact. The court shall affirm the final decision [of the agency] unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions [,] or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative [,] and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, [it] the court shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For the purposes of this section, a remand is a final judgment.

(k) If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the [agency] final decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action.

(l) In all appeals taken under this section, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that costs are allowed in judgments rendered by the Superior Court. No costs shall be taxed against the state, except as provided in section 4-184a.

(m) In any case in which a person appealing claims that [he] such person cannot pay the costs of an appeal under this section, [he] such person shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such fees, costs and necessary expenses, including the requirements of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the

Superior Court. After such hearing as the court determines is necessary, the court shall render its judgment on the application, which judgment shall contain a statement of the facts the court has found, with its conclusions thereon. The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered.

Sec. 29. Subsection (e) of section 1-82a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(e) The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection **[**(c)**]** (d) of section 4-177, as amended by this act. Any such stipulation agreement or settlement shall be approved by a majority of those members present and voting.

Sec. 30. Subsection (e) of section 1-93a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2007*):

(e) The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time, the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection **[**(c)**]** (d) of section 4-177, as amended by this act. Any stipulation agreement or settlement entered into for a violation of this part shall be approved by a majority of its members present and voting.

Sec. 31. (*Effective July 1, 2007*) On or before February 6, 2008, the Chief Administrative Law Judge appointed pursuant to section 3 of

this act shall submit to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary a feasibility analysis and implementation plan for the transfer of contested cases conducted by the Department of Social Services to the Office of Administrative Hearings.

| This act shall take effect as follows and shall amend the following sections: | | |
|---|---|---|
| Section 1 | *October 1, 2007* | 4-61dd |
| Sec. 2 | *July 1, 2007* | New section |
| Sec. 3 | *July 1, 2007* | New section |
| Sec. 4 | *July 1, 2007* | New section |
| Sec. 5 | *October 1, 2007* | New section |
| Sec. 6 | *October 1, 2007* | New section |
| Sec. 7 | *October 1, 2007* | New section |
| Sec. 8 | *October 1, 2007* | New section |
| Sec. 9 | *October 1, 2007* | New section |
| Sec. 10 | *July 1, 2007* | New section |
| Sec. 11 | *July 1, 2007* | New section |
| Sec. 12 | *July 1, 2007* | New section |
| Sec. 13 | *July 1, 2007* | 2c-2b(e) |
| Sec. 14 | *October 1, 2007* | 4-166 |
| Sec. 15 | *October 1, 2007* | 4-176(g) |
| Sec. 16 | *October 1, 2007* | 4-176e |
| Sec. 17 | *October 1, 2007* | 4-177 |
| Sec. 18 | *October 1, 2007* | 4-177a |
| Sec. 19 | *October 1, 2007* | 4-177b |
| Sec. 20 | *October 1, 2007* | 4-177c |
| Sec. 21 | *October 1, 2007* | 4-178 |
| Sec. 22 | *October 1, 2007* | 4-178a |
| Sec. 23 | *October 1, 2007* | 4-179 |
| Sec. 24 | *October 1, 2007* | New section |
| Sec. 25 | *October 1, 2007* | 4-180 |
| Sec. 26 | *October 1, 2007* | 4-181(a) |
| Sec. 27 | *October 1, 2007* | 4-181a |
| Sec. 28 | *October 1, 2007* | 4-183 |
| Sec. 29 | *October 1, 2007* | 1-82a(e) |
| Sec. 30 | *October 1, 2007* | 1-93a(e) |
| Sec. 31 | *July 1, 2007* | New section |

***GAE*** *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

## *OFA Fiscal Note*

### *State Impact:*

| Agency Affected | Fund-Effect | FY 08 $ | FY 09 $ |
|---|---|---|---|
| Auditors | GF - Cost | 560,000 - 1,120,000 | 560,000 - 1,120,000 |
| Attorney General | GF – Cost | 275,000 | 378,000 |
| Comptroller Misc. Accounts (Fringe Benefits) | GF - Cost | 277,480 - 421,960 | 717,120 - 1,054,240 |
| New State Agency – Office of Administrative Hearings | GF - Cost | 356,000 | 318,000 |
| Human Rights & Opportunities, Com.; Department of Transportation; Department of Motor Vehicles; Education, Dept.; Children & Families, Dept. | GF & TF - Transfer from | Over 1,000,000 | Over 1,000,000 |
| New State Agency – Office of Administrative Hearings | GF - Transfer to | Over 1,000,000 | Over 1,000,000 |
| New State Agency – Office of Administrative Hearings | GF & TF – Potential Savings | Indeterminate | Indeterminate |
| Children & Families, Dept. | GF - Revenue Loss | 69,000 | 69,000 |

Note: GF=General Fund, TF = Transportation Fund

***Municipal Impact:*** None

### *Explanation*

Extending whistleblower protections to municipal whistleblowers will result in a significant cost to the Auditors of Public Accounts. The Auditors annually expend approximately 8,800 staff hours reviewing 120 state whistleblower complaints. This translates to the equivalent of 5 full-time auditors dedicated to state whistleblower complaints. It is estimated that the Auditors could review 200 – 400 municipal whistleblower complaints each year. Depending on the number of complaints received, the Auditors will need 8 – 16 new positions, at

approximately $70,000 per position (plus fringe benefits[1]), to handle municipal whistleblower complaints. The cost to the Auditors could range from $560,000 - $1,120,000 annually.

The Office of the Attorney General would require additional investigators and attorneys to perform its obligations under the municipal whistleblower provisions of the bill. The annual cost, including fringe benefits and associated costs, is estimated to be greater than $500,000.

The bill also: (1) creates an Office of Administrative Hearings to coordinate and oversee the conduct of certain administrative proceedings by Administrative Law Judges; (2) establishes credentials for Administrative Law Judges and requires that they receive certain training; (3) grants the Office of Administrative Hearings jurisdiction over certain types of administrative proceedings; and (4) reassigns personnel and transfers resources from state agencies that presently conduct these proceedings to the Office of Administrative Hearings (OAH).[2]

The creation of the OAH would necessitate two additional full time positions (Chief and Deputy Chief) to provide policy guidance to the system of administrative proceedings under the agency's jurisdiction. Associated expenses to establish and operate a centralized office for the new agency would also be incurred. Further costs would be needed to: (1) provide higher salaries to Administrative Law Judges

[1] The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year fringe benefit rate for a new employee as a percentage of average salary is 25.8%, effective July 1, 2006. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2006-07 fringe benefit rate is 34.4%, which when combined with the non pension fringe benefit rate totals 60.2%.

[2] It should be noted that since the Department of Children and Families claims federal Title IV-E reimbursement on its expenditures, a potential loss of revenue of approximately $69,000 would result unless the Department developed an agreement

than they make as hearing officers; and (2) enhance training and legal resources available to Administrative Law Judges. In sum, these costs are estimated to be $470,000 annually.[3]

Establishment of the OAH is expected to yield efficiencies in the processing of cases. However, it is uncertain to what extent this will yield budgetary savings to offset the certain costs indicated above.

Section 12 of the bill allows the Chief Administrative Law Judge to contract with political subdivisions of the state to provide an administrative law judge for purposes of conducting hearings, mediations and settlements. The extent to which this would occur is uncertain. Revenues from these services would be deposited into the General Fund.

### *The Out Years*

The bill allows state agencies to opt out of the OAH in FY 10 or thereafter. The extent to which this option would be exercised is unknown and, consequently, the future fiscal impact of the bill is indeterminate.

with the new agency, established a claiming process, and modified Connecticut's Title IV-E cost allocation plan.

[3] Note: this estimate assumes: (1) that two secretarial positions and two professional positions (caseload coordinator and manager) with the central office of the OAH are filled through a transfer of personnel from other state agencies; and (2) adjudicatory expenses (e.g., transcripts) are met through a reallocation of resources. In particular, if positions are not able to be transferred, the net personnel and fringe cost associated with establishment of the new agency could be twice as high as estimated above.

**OLR Bill Analysis**

**sHB 5298**

***AN ACT CONCERNING THE IDENTITY OF WHISTLEBLOWERS, EXTENDING WHISTLEBLOWER PROTECTIONS TO MUNICIPAL WHISTLEBLOWERS AND ESTABLISHING AN OFFICE OF ADMINISTRATIVE HEARINGS.***

**SUMMARY:**

This bill establishes an Office of Administrative Hearings (OAH) that conducts contested case hearings for the Commission on Human Rights and Opportunities and the departments of children and families, education, transportation, and motor vehicles. With respect to the Department of Motor Vehicles, the OAH does not hear per se cases. With respect to the Department of Education, the OAH only hears from local boards of education regarding special education and school transportation and accommodations. The bill transfers personnel from these agencies to OAH. The office's central office is in Hartford County. The office terminates on July 1, 2012 unless it is reestablished.

The bill requires the office to conduct the hearings in accordance with the bill and the Uniform Administrative Procedures Act (UAPA). However, the bill specifies that provisions in the UAPA allowing for action by a majority of the members of a multi-member agency do not apply to hearings conducted by OAH. Actions to (1) enforce an order of dismissal, stipulation, settlement agreement, consent order, or (2) require a proposed or final decision in a contested case may be brought in the New Britain, rather than Hartford, Superior Court.

The bill makes several changes to the UAPA, including allowing an agency or OAH to enforce a subpoena by filing a complaint in New Britain, rather than Hartford, Superior Court and eliminating the authority of a presiding officer in a contested case to allow people who are not parties or intervenors in the case to present statements.

The bill extends to municipal whistleblowers protections currently enjoyed by state employees who report corruption, unethical practices, violations of state law or regulation, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state or quasi-public agency or large state contract. It bans the state auditors and attorney general from disclosing a whistleblower's identity at any time. Under current law they may disclose the identity of state, quasi-public agency, and large state contract whistleblowers (1) at any time with consent and (2) without consent whenever disclosure is unavoidable during the course of the investigation.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2007, except that the provisions (1) establishing the OAH, (2) requiring the appointment of a chief administrative law judge and spelling out his duties, (3) prohibiting the office from hearing certain cases, (4) authorizing the governor to exempt certain agencies from the referral requirement, (5) permitting the chief administrative law judge to contract with political subdivisions, (6) requiring the office to terminate, and (7) requiring the Judiciary report are effective July 1, 2007.

## OFFICE OF ADMINISTRATIVE HEARINGS

### *Staff*

***Chief Administrative Law Judge.*** The bill requires the governor to appoint a chief administrative law judge (ALJ) to serve as the office's full-time chief executive officer for an initial term that expires March 1, 2008. Thereafter, she must appoint the chief ALJ, with legislative approval, to a four-year term or until a successor is appointed and qualified. The chief ALJ must take the same oath of office as legislators and executive and judicial officers. A sitting chief ALJ is eligible for reappointment. The governor may remove the chief ALJ for good cause.

The chief ALJ must be admitted to the Connecticut bar for at least 10 years, have knowledge of administrative law, and refrain from the

private practice of law. The chief ALJ is exempt from the classified service.

The chief ALJ has all of the powers specifically granted by law and any additional powers that are reasonable and necessary for him to carry out his duties, including the powers and duties of executive branch agency department heads. Additionally, he also has all of the powers and duties of an ALJ.

The chief ALJ must:

1. assign an administrative law judge to hear each case referred to OAH and, where practicable, base the assignment on expertise in the legal issues or general subject matter of the proceeding;

2. prepare a proposed final decision and final decision that keeps protected information, including the identity of any person or party, confidential if state or federal law or regulations or a court order requires it;

3. collect, compile, and prepare statistics and other data on OAH's operations and annually report to the governor and the legislature on such operations, including the number of (a) hearings initiated, (b) proposed final decisions rendered, (c) partial or total reversals of such decisions by the agencies, (d) final decisions rendered, and (e) proceedings pending;

4. study all aspects of administrative adjudication and develop recommendations to promote the goals of impartiality, fairness, uniformity, and cost-effectiveness in the administration and conduct of contested cases;

5. adopt implementing regulations, including regulations to carry out applicable provisions of the UAPA regarding contested case hearings and the related OAH policies;

6. develop, in consultation with each agency that transfers its contested cases to the office and with the appropriate committee

or section of the Connecticut Bar Association, a program for the continuing training and education of administrative law judges and ancillary personnel, and implement such program; and

7. index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions, and final decisions available for public inspection and copying electronically as required by the Freedom of Information Act.

The bill specifies that any regulations the office adopts regarding contested cases it hears supersede any inconsistent agency regulations, policies, or procedures, except those mandated by state or federal law. The regulations must include standard time limits for agency action in contested cases and standards for the giving of notices of hearings, for the scheduling of hearings and for the assignment of administrative law judges.

***Other Staff.*** As the office's chief executive officer, the chief ALJ can hire staff, including a deputy. The bill requires the chief ALJ to appoint any deputy from the ALJs. It transfers to OAH certain full-time and permanent part-time employees from the agencies whose cases the office will hear. The transferred employees are those primarily responsible for (1) conducting hearings in contested cases and issuing final decisions or proposed final decisions, or (2) providing administrative services required for conducting such hearings and issuing such decisions.

Each ALJ, other than those transferred from other agencies, must be admitted to the practice of law in this state for at least two years. All ALJs must be knowledgeable in administrative law. ALJs assigned to hear special education cases must receive training in administrative hearing procedures, including due process, applicable to the special education needs of children. ALJs have the powers granted to hearing officers and presiding officers.

***Job Classifications and Benefits.*** The chief ALJ, ALJs, assistants and other OAH employees (1) are entitled to the same fringe benefits

as other state employees, (2) are included in state employees' disability and retirement programs, and (3) receive full retirement credit for work completed each year or portion thereof for which retirement benefits are paid.

Transferees and chief ALJ appointees are in the classified service and covered by collective bargaining. Those transferred employees who are members of an employee organization at the time of their transfer continue to be represented by that organization. The ALJs that the chief appoints are represented by the collective bargaining representative for administrative and residual state employees.

Transferred employees cannot lose their job classification or receive reduced salaries, seniority, or benefits because of the transfer. They get credit for time served in other agencies.

Transferred employees who are members of a collective bargaining unit at the time of their transfer remain the beneficiaries of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees. Transferees who are not members of a collective bargaining unit at the time of their transfer and chief ALJ appointees must (1) have the same job classifications as transferees who are members of a collective bargaining unit at the time of their transfer and (2) be subject to and become the beneficiaries of the terms of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

An ALJ, assistant, or other OAH employee who is removed, suspended, demoted, or subjected to disciplinary action or other adverse employment action may appeal the action in accordance with the applicable collective bargaining agreement.

### *Types of Cases Heard*

The chief ALJ may, by contract, provide ALJs to conduct hearings, mediations, and settlements for political subdivisions of the state.

Beginning October 1, 2007, the bill requires OAH to conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases brought by or before the:

1. Department of Children and Families;
2. Department of Transportation; and
3. Commission on Human Rights and Opportunities, including allegations of retaliation against whistleblowers.

Beginning February 1, 2008, OAH must conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases:

1. appeals of local decisions brought before the Department of Education concerning a child's special education needs or school transportation or accommodations; and
2. brought by or before the Department of Motor Vehicles regarding restrictions on teenage drivers; license denials, restrictions, suspensions, or revocations; safety regulation violations; suspensions or revocations of certificates of title or special plates or placards for the disabled; or requirements for drivers' training programs.

By February 6, 2008, the bill requires the chief administrative law judge to submit to the Judiciary Committee a feasibility analysis and implementation plan for the transfer of contested cases conducted by the Department of Social Services to OAH. Beginning October 1, 2010, the governor may, for good cause, exempt an agency from the requirement for OAH to hear their contested cases.

The bill prohibits the chief ALJ from assigning an ALJ to hear (1) a contested case that federal law requires to be conducted by a specific agency or other hearing authority or (2) any matter conducted by an agency head or at least one member of a multimember agency.

### *Referred Cases*

The bill requires any hearing officer under contract with an agency to conduct hearings and issue decisions in contested cases of the type to be referred to complete their cases unless the chief ALJ decides to reassign the cases to ALJs.

The bill requires agencies that refer their cases to OAH to certify the official record in each case, and give the parties in those cases notice of the referral and that an ALJ will set the time and place of the hearings. OAH must give the notice and also include in it the nature of the hearing. Thereafter, a party must file all documents that are to become part of such record with OAH. Filing these documents with the agency, rather than with OAH, is not a jurisdictional defect and is not grounds for termination of the proceeding. However, the ALJ may assess appropriate costs and sanctions against a party who misfiles such documents on a showing of prejudice resulting from a willful misfiling. OAH must maintain the official record of a contested case referred to it.

### *Hearings*

An ALJ assigned by the chief ALJ must hear, mediate, or settle any contested case held by OAH. The ALJ must conduct hearings in accordance with the bill and the UAPA. This means, among other things, that the UAPA's definitions and, unless otherwise provided by law, time limits apply to all contested cases conducted by OAH.

These time limits include the time to (1) notice a hearing (reasonable time before hearing), (2) petition to intervene (at least five days before the hearing unless waived), (3) provide notice of evidence (timely manner), (4) render a final decision (within 90 days after all evidence presented or briefs are filed, whichever is later), (5) petition for reconsideration (within 15 days after the final decision is personally delivered or mailed), and (6) decide whether to reconsider a matter (within 25 days after a petition is received or within 40 days after the final decision is delivered).

If a contested case is not resolved through mediation or settlement, either party may proceed to a hearing. An ALJ who attempts to settle or mediate a matter may not thereafter be assigned to hear it. An ALJ must dismiss any case resolved by stipulation, agreed settlement, or consent order. The order of dismissal must incorporate by reference and have attached to it the stipulation, agreed settlement or consent order. The order must further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. The order and stipulation, agreed settlement, or consent order may be enforceable by any party in Superior Court.

### *Proposed and Final Decisions*

An ALJ's proposed final decision must be in writing, comply with the UAPA's requirement for final decisions, and delivered, either personally or by registered or certified mail, return receipt requested, promptly to each party or the party's authorized representative and to the agency. After the ALJ renders the proposed final decision, the case records must be delivered promptly to the agency.

An ALJ's proposed final decision becomes the agency's final decision unless the agency head modifies or rejects it within 21 days after it is delivered or mailed. The agency head may, before the expiration of the period and for good cause, extend the 21-day deadline for 21 additional days. In the event of agency inaction, the proposed final decision is effective not later than 21 days after it is mailed or received or at a later date specified in the proposed final decision. In this case, a party or the authority that rendered the final decision has 15 days after the proposed decision becomes final to ask for reconsideration. A person appealing the decision has 45 days after it becomes final to serve a copy of the appeal on the agency or the attorney general's Hartford office and file the appeal.

When reviewing an ALJ's proposed final decision, the head of the agency may give the parties, including the agency, an opportunity to present briefs and present oral argument. If the agency head determines that additional evidence is necessary, he must refer the

matter to OAH. The chief ALJ must assign the ALJ who rendered the proposed decision to take the additional evidence unless the ALJ is unavailable. The ALJ has 30 days after the referral to take the additional evidence and prepare a proposed final decision based on it and the record of the prior hearing.

If the head of the agency modifies or rejects the proposed final decision, he must state the reason for doing so on the record.

## UAPA PROVISION ON PROPOSED AND FINAL DECISIONS

The bill makes several changes to the UAPA. Specifically, it:

1. allows a party to a contested case who does not receive a final decision within 90 days after the close of evidence of the filing of briefs, whichever is later, to apply to the New Britain Superior for an order requiring the authority presiding over the case to render a proposed final decision right away (the law already permits the action to demand a final decision);

2. allows a final decision to be stated orally on the record as opposed to written only in cases where there is no proposed final decision;

3. requires all proposed final and final decisions, instead of just final decisions adverse to a party, to apply pertinent laws and include the findings of fact and conclusions of law;

4. requires ALJs to deliver their final decisions to the applicable agency either personally or by registered or certified mail, return receipt requested;

5. requires an agency rendering a final decision to immediately transmit a copy to OAH, regardless to whether the new office has jurisdiction; and

6. requires that the date a proposed final or final decision is delivered or mailed be endorsed on the front of the decision or on a transmittal sheet included with it.

The bill allows for jury trials in appeals from final decisions if such is provided by law. Currently, all appeals must be conducted by the court without a jury. The bill also allows a court to substitute its judgment for that of the authority that rendered the final decision if the law provides a different standard of review.

## BACKGROUND

### *Whistleblowers*

Anyone may report illegal or unethical behavior by a large contractor or in a state or quasi-public agency to the auditors of public accounts. The auditors review, and the attorney general investigates, the matter.

Employers and other employees cannot retaliate against a whistleblower. There is a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint. Any victim of retaliation may (1) be reinstated to his former position, (2) receive back pay, (3) have his benefits reestablished to the level for which he would have been eligible but for the violation, and (4) receive reasonable attorney fees and any other damages.

Whistleblowers who act in good faith are not liable for any civil damages resulting from a disclosure made in good faith.

## COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute
Yea 12 Nay 1 (03/26/2007)